

EXHIBIT 3

Glenn E. Westreich (State Bar No.100457)
 gwestreich@nixonpeabody.com
 Beth L. Mitchell (State Bar No. 187460)
 bmittchell@nixonpeabody.com
 Rosalyn P. Mitchell (State Bar No. 173829)
 rmittchell@nixonpeabody.com
 NIXON PEABODY LLP
 Two Embarcadero Center, Suite 2700
 San Francisco, CA 94111
 Telephone: (415) 984-8200
 Facsimile: (415) 984-8300

Michael St. James (State Bar No. 95653)
 ST. JAMES LAW, P.C.
 155 Montgomery Street, Suite 1004
 San Francisco, CA 94104
 michael@stjames-law.com
 Telephone: (415) 391-7566
 Facsimile: (415) 391-7568

Attorneys for Defendants/Cross-Claimants
 JOHN M. BRYAN, JOHN M. AND
 FLORENCE E. BRYAN TRUST, J.M.
 BRYAN FAMILY TRUST

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA – SANTA ROSA DIVISION

In re

 THE LEGACY ESTATE GROUP, LLC,
 formerly doing business as FREEMARK
 ABBEY WINERY, BRYON VINEYARD &
 WINERY, and ARROWOOD VINEYARD &
 WINERY

Debtor

OFFICIAL COMMITTEE OF UNSECURED
 CREDITORS OF THE LEGACY ESTATE
 GROUP, LLC,

Plaintiff,

v.

Case No. 05-14659

Adv. No. 06-01173

Chapter 11

**NOTICE OF MOTION TO CERTIFY
 PROCEEDING TO DISTRICT COURT
 FOR TRIAL BY JURY PURSUANT TO
 BANKRUPTCY LOCAL RULE 9015-2**

Hearing Date: February 23, 2007

Time: 9:00 a.m.

Courtroom of Hon. Alan Jaroslovsky

JOHN M. BRYAN, JOHN M. AND
FLORENCE E. BRYAN TRUST, J.M. BRYAN
FAMILY TRUST, KULWINDER SIDHU,
DEVINDER SIDHU, PACIFIC PARAGON
INVESTMENT FUND LTD, a British Columbia
company, HARRY CHEW, and AIC CAPITAL
PARTNERS, LLC, a California limited liability
company

Defendants.

JOHN M. BRYAN, JOHN M. AND
FLORENCE E. BRYAN TRUST, J.M. BRYAN
FAMILY TRUST,

Defendants/Cross-Claimants,

v.

KULWINDER SIDHU, DEVINDER SIDHU,
PACIFIC PARAGON INVESTMENT FUND
LTD, a British Columbia company, HARRY
CHEW, AIC CAPITAL PARTNERS, LLC, a
California limited liability company, and
LAMINAR DIRECT CAPITAL, L.P., a Texas
limited partnership

Defendants/Cross-Defendants.

**TO THE UNITED STATES BANKRUPTCY COURT; COUNSEL OF RECORD TO
OPPOSING PARTIES IN PENDING ACTIONS; AND THE PARTIES REQUESTING
SPECIAL SERVICE IN THESE CASES:**

PLEASE TAKE NOTICE THAT on February 23, 2007, at 9:00 a.m., Defendants/Cross-
Claimants John M. Bryan, John M. and Florence E. Bryan Trust, J.M. Bryan Family Trust will and
hereby do respectfully move the Court for an order granting Defendants' Motion To Certify
Proceeding To District Court For Trial By Jury Pursuant To Bankruptcy Local Rule 9015-2.

///

///

///

///

1 The motion is based upon this Notice of Motion, the Memorandum of Points and Authorities
2 in Support of the Motion To Certify Proceeding To District Court For Trial By Jury Pursuant To
3 Bankruptcy Local Rule 9015-2, and Proposed Order, the files and pleadings in this action, and any
4 oral argument that may be had at the hearing on this motion.

5 NIXON PEABODY LLP

6
7
8 DATED: February 16, 2007

By: Rosalyn P. Mitchell
Glenn E. Westreich
Rosalyn P. Mitchell
Attorneys for Defendants/Cross-Claimants
JOHN M. BRYAN, JOHN M. AND
FLORENCE E. BRYAN TRUST,
J.M. BRYAN FAMILY TRUST

Glenn E. Westreich (State Bar No.100457)
 gwestreich@nixonpeabody.com
 Beth L. Mitchell (State Bar No. 187460)
 bmitchell@nixonpeabody.com
 Rosalyn P. Mitchell (State Bar No. 173829)
 rmitchell@nixonpeabody.com
 NIXON PEABODY LLP
 Two Embarcadero Center, Suite 2700
 San Francisco, CA 94111
 Telephone: (415) 984-8200
 Facsimile: (415) 984-8300

Michael St. James (State Bar No. 95653)
 ST. JAMES LAW, P.C.
 155 Montgomery Street, Suite 1004
 San Francisco, CA 94104
 michael@stjames-law.com
 Telephone: (415) 391-7566
 Facsimile: (415) 391-7568

Attorneys for Defendants/Cross-Claimants
 JOHN M. BRYAN, JOHN M. AND
 FLORENCE E. BRYAN TRUST, J.M.
 BRYAN FAMILY TRUST

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA – SANTA ROSA DIVISION

In re
 THE LEGACY ESTATE GROUP, LLC,
 formerly doing business as FREEMARK
 ABBEY WINERY, BRYON VINEYARD &
 WINERY, and ARROWOOD VINEYARD &
 WINERY

Debtor

OFFICIAL COMMITTEE OF UNSECURED
 CREDITORS OF THE LEGACY ESTATE
 GROUP, LLC,

Plaintiff,

v.

Case No. 05-14659

Adv. No. 06-01173

Chapter 11

**MEMORANDUM OF POINTS AND
 AUTHORITIES IN SUPPORT OF
 MOTION TO CERTIFY PROCEEDING
 TO DISTRICT COURT FOR TRIAL BY
 JURY PURSUANT TO BANKRUPTCY
 LOCAL RULE 9015-2**

Local Fed. R. Bankr. R. 9015-2

Hearing Date: February 23, 2007

Time: 9:00 a.m.

Courtroom of Hon. Alan Jaroslovsky

JOHN M. BRYAN, JOHN M. AND
FLORENCE E. BRYAN TRUST, J.M. BRYAN
FAMILY TRUST, KULWINDER SIDHU,
DEVINDER SIDHU, PACIFIC PARAGON
INVESTMENT FUND LTD, a British Columbia
company, HARRY CHEW, and AIC CAPITAL
PARTNERS, LLC, a California limited liability
company

Defendants.

JOHN M. BRYAN, JOHN M. AND
FLORENCE E. BRYAN TRUST, J.M. BRYAN
FAMILY TRUST,

Defendants/Cross-Claimants,

v.

KULWINDER SIDHU, DEVINDER SIDHU,
PACIFIC PARAGON INVESTMENT FUND
LTD, a British Columbia company, HARRY
CHEW, AIC CAPITAL PARTNERS, LLC, a
California limited liability company, and
LAMINAR DIRECT CAPITAL, L.P., a Texas
limited partnership

Defendants/Cross-Defendants.

Defendants John M. Bryan, John M. and Florence E. Bryan Trust and the J.M. Bryan Family Trust (collectively, the "Bryan Defendants") hereby move that the Court certify this Adversary Proceeding to the District Court for trial by jury pursuant to Bankruptcy Local Rule 9015-2 and in support thereof as follows:

I. INTRODUCTION

Plaintiff made a jury demand with its Complaint herein. The Bryan Defendants made a jury demand with their Answer herein. Defendants Pacific Paragon Investment Fund, Ltd, Harry Chew and AIC Capital Partners, LLC made jury demands with their answers herein. (The only other parties to this litigation are Kulwinder and Devinder Sidhu (the "Sidhus"), who have obtained an extension of time, and Laminar Direct Capital, L.P., which has filed a Rule 12 Motion.) By law, at least one of the Bryan Defendants, JOHN M. AND FLORENCE E. BRYAN TRUST, are entitled to have their claims heard by a jury. As such, by this request, the Bryan Defendants seek certification of this entire

proceeding to the District Court for trial by jury. Certification is proper at this time because the parties have not and will not all consent to have this matter heard by a jury in Bankruptcy court.

II. ARGUMENT

Bankruptcy Local Rule 9015-2 provides:

(a) Determination of Right. In any proceeding in which a demand for jury trial is made, the Bankruptcy Judge shall, upon the motion of one of the parties, or upon the Bankruptcy Judge's own motion, determine whether the demand was timely made and whether the demanding party has a right to a jury trial. The Bankruptcy Judge may, on the judge's own motion, determine that there is no right to a jury trial in a proceeding even if all of the parties have consented to a jury trial.

(b) Certification to District Court. If the Bankruptcy Judge determines that the demand was timely made and the party has a right to a jury trial, and if all parties have not filed written consent to a jury trial before the Bankruptcy Judge, the Bankruptcy Judge shall certify to the District Court that the proceeding is to be tried by a jury and that the parties have not consented to a jury trial in the Bankruptcy Court. Upon such certification, reference of the proceeding shall be automatically withdrawn, and the proceeding assigned to a Judge of the District Court pursuant to the Assignment Plan.

The Bryan defendants meet each element of Local Rule 9015-2.

1. Demand for Jury Trial Was Timely Made.

The Bryan Defendants timely made a demand for a jury trial. That demand is contained within the timely answer filed on January 5, 2007.

2. The Bryan Defendants Have a Right to a Jury Trial.

In Granfinanciera v. Nordberg, 492 U.S. 33 (1989), the Supreme Court considered the Seventh Amendment right to jury trial in a civil case in the context of bankruptcy proceedings and concluded that the Seventh Amendment grants the right of jury trial to cases at common law which the court interpreted to mean cases involving legal rights. Granfinanciera 492 U.S. 33.

In Granfinanciera, the Court articulated a three-part test for determining whether a party is entitled to a jury trial: 1) it must be an action that would have been brought at a court of law as opposed to equity in England prior to the merger of the courts of law and equity; 2) the remedy sought must be legal in nature; and 3) the action must involve a private rather than a public right. *Id.*

at 50-51. See also Sharp v. Hawkins (In re 3DO Co.), 2004 U.S. Dist. LEXIS 25367, 13-14 (N.D. Cal. 2004).

Even a creditor or debtor who submits to the equity jurisdiction of the bankruptcy court retains the right to a jury trial for disputes that are "only incidentally related to the bankruptcy process." In re Crown Vantage, Inc., 2002 U.S. Dist. LEXIS 26109 *11 (N.D. Cal. 2002) (motion to strike jury demand denied), quoting Germain v. Connecticut National Bank, 988 F.2d 1323, 29-30 (2nd Cir. 1993).

The plaintiff has alleged the following causes of action against the Bryan Defendants in the complaint: improper distribution (Cal. Corp. Code § 17254 and 17255) and breach of fiduciary duty (Cal. Corp. Code § 17153 (liable for financial damage)). See generally Granfinanciera v. Nordberg, 492 U.S. 33, 46 (1989); see also In re Crown Vantage, Inc., 2002 U.S. Dist. LEXIS 26109 *10 (N.D. Cal. 2002) (right to jury trial for breach of fiduciary duty claim).

The Bryan defendants have alleged the following causes of action in their cross-claim: negligent misrepresentation and fraudulent misrepresentation. A party alleging these causes action is entitled to a trial by jury. See In re Marshland Dev. Inc., 129 B.R. 626, 629-30 (1991) (right to jury trial for negligent misrepresentation claim) ; In re Crown Vantage, Inc., 2002 U.S. Dist. LEXIS 26109 *10 (N.D. Cal. 2002) (right to jury trial for negligent misrepresentation and common law fraud claims).

3. The Bryan Defendants Have Not Consented to a Jury Trial in Bankruptcy Court.

To date, no party has filed written consent to a jury trial in Bankruptcy Court. See, Bankruptcy Local Rule 9015-2(b) and the Bryan Defendants will not so consent. Therefore, under Bankruptcy Local Rule 9015-2(b), this Court must certify to the District Court that this proceeding is to be tried by a jury in that tribunal.

4. Not All Bryan Defendants Filed A Proof of Claims.

John M and Florence E. Bryan Trust have not filed a Proof of Claim and hence have not waived its right to trial by jury. Granfinanciera 492 U.S. at 36. Moreover, John M. and Florence E.

Bryan Trust are indispensable parties to the trial contemplated in the Bankruptcy Court. Therefore, in the interest of avoiding prejudice to the various defendants, including John M. and Florence E. Bryan Trust, the whole of the instant proceeding should be transferred to the District Court.

5. If Severed, The John M and Florence E. Bryan Trust Would Be Prejudiced.

John M and Florence E. Bryan Trust Courts have held that whether severance is warranted requires balancing of several considerations, including “the convenience of the parties, avoidance of prejudice to either party, and promotion of the expeditious resolution of the litigation.” Official Comm. Of Unsecured Creditors v. Shapiro, 190 F.R.D. 352, 354 (E.D. Pa. 2000) (citing German v. Fed. Home Loan Mtg. Corp., 896 F. Supp. 1385, 1400 n.6 (S.D.N.Y. 1995)). Specific factors to take into account by the bankruptcy court when determining whether severance is warranted include “(1) whether the issues sought to be tried separately are significantly different from one another, (2) whether the separable issues require the testimony of different witnesses and different documentary proof, (3) whether the party opposing the severance will be prejudiced if it is granted, and (4) whether the party requesting the severance will be prejudiced if it is not granted.” Id. See also Fanning v. Black & Decker, Inc., 1999 U.S. Dist. LEXIS 3407, Civ. A. No. 98-6141 (E.D. Pa. 1999).

The decision to sever pursuant to FRBP 7021 requires the bankruptcy court to determine whether a party is “indispensable.” See Fanning, 190 F.R.D. at 355 (citing Provident Tradesmens Bank & Trust Co. v. Patterson, 390 U.S. 102, 119, 19 L. Ed. 2d 296, 88 S. Ct. 733 (1968)). In order to determine whether a party is “indispensable” a court must undertake a two-step inquiry. First, the court must determine whether the party is necessary under FRBP 7019(a). In order to satisfy this inquiry there must be a “showing that 1) relief cannot be accorded without the third party; 2) an adjudication of the parties’ rights ‘would impair or impede an absent party’s ability to protect its interests in the subject matter of the litigation’; and (3) there would otherwise be a substantial risk of multiple or inconsistent obligations. See Shapiro, 190 F.R.D. at 355 (quoting Janney Montgomery Scott, Inc. v. Shepard Niles, Inc., 11 F.3d 399, 404-05 (3d Cir. 1993)). If the party is deemed by the court to be “necessary,” the court must then determine whether such party is “indispensable”. Id.

1 In the instant case, prejudice will be suffered by John M. and Florence E. Bryan Trust if it is
2 severed from the Bankruptcy Court action. The issues sought to be tried are identical and do not
3 require the testimony of different witnesses and different documentary proof. Moreover, John M. and
4 Florence E. Bryan Trust are indispensable parties to this action. See Shapiro, 190 F.R.D. at 355
5 (holding that certain parties could be severed from action, but only after it is determined that such
6 party is not a necessary or indispensable party to the action). The adjudication of their rights in the
7 Bankruptcy Court (through doctrines of issue preclusion) will impair or impede John M. and Florence
8 E. Bryan Trust's ability to protect its interest in the subject matter of the litigation. Furthermore,
9 transferring the action in its entirety to the District Court comports with principles of judicial
10 economy and preservation of the resources of the Debtor's estate.

11 **6. Immediate Certification is Proper.**

12 The District Court applies different procedural rules to the administration of a lawsuit than the
13 Bankruptcy Court, especially at the commencement of litigation. Compare, Bankruptcy Local Rule
14 7016-1 and District Court Local Rule 16. An immediate transfer will reduce confusion and limit the
15 unnecessary expenditure of judicial resources by immediately implementing the District Court
16 procedural rules. As mentioned above, one party has filed a Rule 12(b) motion to dismiss the Bryan
17 Defendants' cross-claim. The Bryan Defendants respectfully submit that the Judge who will
18 administer the litigation generally; that is, the District Judge, should determine the merits, or lack
19 thereof, of a potentially dispositive motion.

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

1 **III. CONCLUSION**

2 For the foregoing reasons, the Bryan Defendants respectfully request that the Court forthwith
3 certify this Adversary Proceeding to the District Court pursuant to Bankruptcy Local Rule 9015-2
4 and grant such further relief as may be just and proper.
5
6
7

8 NIXON PEABODY LLP

9 DATED: February 16, 2007

10 By: 

11 Glenn E. Westreich

12 Rosalyn P. Mitchell

13 Attorneys for Defendants/Cross-Claimants

14 JOHN M. BRYAN, JOHN M. AND

15 FLORENCE E. BRYAN TRUST,

16 J.M. BRYAN FAMILY TRUST
17
18
19
20
21
22
23
24
25
26
27